SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. A-1284

Mark Anderson, et al.,
Petitioners,

versus

Preston Tarrant, et al.,
Respondents.

BRIEF OPPOSING CERTIORARI

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September, 1974

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In the
Supreme Court of the United States
OCTOBER TERM, 1974

No. A-1254

MIKE ANDERSON, ET AL.,
Petitioners,

VERSUS

PRESTON TRIMBLE, ET AL.,
Respondents.

BRIEF OPPOSING CERTIORARI

QUESTIONS PRESENTED

1. Is a statute forbidding the use of the names of war dead without the prior consent of surviving family in connection with any anti-war, anti-police action or anti-draft demonstration in a public place unconstitutional under the First and Fourteenth Amendments of the Constitution?

2. Do state courts have jurisdiction to grant declaratory and/or injunctive relief construing or determining the validity of penal statutes where there would be no destruction of property rights and infliction of irreparable injury?

REASONS FOR NOT GRANTING THE WRIT ARGUMENT AND AUTHORITIES

I

DECLARATORY AND INJUNCTIVE RELIEF WERE PROPERLY DENIED BY THE OKLAHOMA SUPREME COURT.

Petitioners contend that their constitutional rights have been violated in being denied declaratory and injunctive relief; that severe and irreparable harm will result if they are prosecuted for violating the provisions of 21 O.S. 1971, §1218. They also allege that "significant questions" as to the awarding of declaratory and injunctive relief are raised by this case.

In making these allegations, petitioners avoid the question of why they were denied relief by the Oklahoma Supreme Court. Equity will not enjoin enforcement of a criminal law unless it is unconstitutional or otherwise void, and enforcement thereunder involves an invasion of property rights which will result in irreparable injury. While petitioners allege they will suffer severe and irreparable harm from prosecution, no allegation has been made, or evidence offered, indicating that property rights would be destroyed if enforcement of the statute was not enjoined. There being no evidence or facts to support their legal position, petitioners have failed to present a question for consideration.

Petitioners cite *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714, and *Dombrowski* v. *Pfister*, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22, for the proposition that they are entitled to declaratory and injunctive relief. *Ex parte Young, supra*, actually involved property rights, the plaintiff, a stockholder in a railroad company, seeking to enjoin

the enforcement of a statute providing for the establishment of rates for railroad transportation. In *Dombrowski* v. *Pfister, supra,* a federal injunction against a threatened state criminal prosecution was allowed due to the vagueness and overbreadth of the statute. Irreparable injury was shown by substantial loss or impairment of freedom of expression in awaiting state court's disposition and appropriate review and by a situation in which defense of the prosecution would not assure adequate vindication of constitutional rights. There is no loss or impairment of freedom of expression in this case because 21 O.S. 1971, §1218, regulates a course of conduct not even constituting symbolic speech. See *Cox* v. *State of Louisiana,* 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471. Nor is there any allegation of vagueness or overbreadth or that a situation exists in which defense of the prosecution would not assure vindication of constitutional rights.

II

THE RIGHT TO PRIVACY IS A SUBSTANTIAL GOVERNMENTAL INTEREST.

The State of Oklahoma has a substantial governmental interest in protecting the right to privacy of the names of war dead by regulating a course of conduct not constituting speech. See *Cox* v. *State of Louisiana,* 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471. In enacting 21 O.S. 1971, §1218, the Oklahoma Legislature sought to correct a very specific evil, the use of a deceased's name in a manner that invaded the right to privacy of the survivors. To correct such evil, legislation was enacted to strike at the abuse, the use of war dead names in anti-war, anti-draft and anti-police demon-

strations and protests. Long ago the Court upheld the sanctity of the individual's right to control his own person. In *Union Pacific Railway Co.* v. *Botsford*, 141 U.S. 250, 11 S.Ct. 1000, 35 L.Ed. 734, the Court observed:

> "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others unless by clear and unquestionable authority of law. As well said by Judge Cooley, 'the right to one's person may be said to be a right to complete immunity: to be let alone.'"

CONCLUSION

THEREFORE, premises considered, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent

September, 1974

CERTIFICATE OF SERVICE

This is to certify that I mailed three copies of the above and foregoing instrument to which this certification is attached, to the following named counsel of record this ..... day of September, 1974:

Stephen Jones
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